WP(C) 7037/2005
BEFORE
HON'BLE MR. JUSTICE P.K.MUSAHARY
IN THE GAUHATI HIGH COURT
(THE HIGH COURT OF ASSAM: NAGALAND: MEGHALAYA:
MANIPUR: TRIPURA: MIZORAM AND ARUNACHAL PRADESH)

WP(C) NO. 7037/2005

MISS RASHMI REKHA SAIKIA
D/O SRI GOPAL CHANDRA SAIKIA,
R/O RONGDOI DAGAON,
P.O. - BAHANA TINIALI
P.S. - JORHAT,
DIST. - JORHAT, ASSAM.

&. PETITIONER.

-Versus-

1. THE STATE OF ASSAM,
REPRESENTED BY ITS SECRETARY,
DEPARTMENT OF EDUCATION,
ASSAM, DISPUR, GUWAHATI : 6.

2. THE DIRECTOR OF HIGHER
EDUCATION, KAHILIPARA,
GUWAHATI : 19.

3. J. B. COLLEGE, JORHAT,
REPRESENTED BY ITS PRINCIPAL.

&. RESPONDENT.

BEFORE
HON'BLE MR. JUSTICE P. K. MUSAHARY

For the Petitioner : Mr. D. Mazumdar
Mr. A. J. Sarma
Mr. Rupam Sarma

For the Respondents : Mr. M. Khataniar
Mr. D.C. Borah

Date of hearing & Judgment : 17.12.2007

JUDGMENT AND ORDER (ORAL)

Heard Mr. D. Mazumdar, learned counsel for the petitioner Also heard Mr. M. Khataniar, learned counsel for respondent No.1 and 2 and Mr. D.C. Borah, learned counsel appearing on behalf of respondent No. 3.

2. The petitioner has contended that an advertisement was issued on 22.12.2004 by the Governing Body of J.B. College, Jorhat for filling up certain posts including a sanctioned post of lecturer in Zoology. The petitioner appeared in the interview and she stood first in the selection and the resolution of selection

was forwarded to the Director of Secondary Education, Assam, the respondent No. 2 as per Rule 18 of the Assam Non-Government College Management Rules 2001 by the Principal, J.B. College, Jorhat, vide letter No. JBC/Est/7/2005/75 dated 11.07.2005 (Annexure C). The approval of the respondent No.2, the Director for appointment of the petitioner was not accorded due to proposal already taken by the Government for withdrawal of sanctioned post of lecturer in Zoology of JB College, Jorhat and the respondent Director by his letter dated 29.04.2005 requested the said college not to advertise the said post. The said direction was made by the respondent Director pursuant to Government order dated 16.02.2005 for the purpose of implementation of Clause 4 (C) of the Office Memorandum dated 17.07.04.

3. It is submitted by Mr. Majumdar, learned counsel for the petitioner that the aforesaid Government Office Memorandum, so far as clause 4(C) is concerned, has became redundant in view of the Judgment and Order dated 06.06.06, passed in WP(C) 7290/2005 and the Assam College Employees (Provincialisation) Act, 2005. Therefore there is no embargo on the process of appointment of the petitioner as lecturer in Zoology Department in JB College, Jorhat.

4. Countering the submissions made by Mr. Majumdar, learned counsel for the respondent Nos. 1 and 2, Mr. Khataniar submits that appointment cannot be made by the Governing Body of the College in view of the omission on their part in obtaining prior approval from the Director for advertisement of the post. The learned counsel for the respondent Nos. 1 and 2 did not enclose any Government Order/circular requiring such approval that is required by the Governing Body for issuing advertisement. It has been submitted by Mr. Majumdar, learned counsel for the petitioner, that the process of recruitment does not contemplate obtaining prior approval for issuing advertisement under Section 6 of the Assam College Employees (Provincialisation) Act, 2005 and any circular or order of the Government cannot override the provision of the law and the respondent authorities cannot make any objection to that effect.

5. It is submitted by Mr. D.C. Borah, appearing for respondent No.3, that there is requirement of a lecturer in Zoology Department in the J.B. College, Jorhat and infact that post has been lying vacant since 28.02.2003 with the retirement of Smti. Pronoti Saikia and infact the Governing Body of the college is pursuing the Government for immediate appointment for the academic interest of the students.

6. This Court while issuing notice on 07.10.2005, observed as follows:

> In the interim it is provided that the authority may proceed with the selection in terms of the advertisement dated 22.12.2004, but no final appointment shall be made till the returnable date.

7. The above interim order was directed to be continued by this Court vide Order dated 16.11.2005.

8. In my considered opinion, taking prior approval for issuing advertisement for filling up a sanctioned post of lecturer in the college is not a legal requirement as the same is not contemplated under the relevant rules and the respondent authorities cannot put any embargo on the process of recruitment, particularly when the process has already completed in so far as the penal has already been prepared and admitted the position that the selection was held and the petitioner topped in the said selection list. Another aspect we have to consider is the academic interest of the students who are suffering for long 4(four) years and therefore it is not considered appropriate/proper to keep the matter pending.

9. In view of the above, I am inclined to dispose of this petition with a direction to the respondent authorities to act upon the selection list already prepared by the Governing Body of the college within a period of 1(one) month from

the date of submission of the certified copy of this order.

10. With the aforesaid direction this writ petition is accordingly disposed of.